

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

UNITED STATES OF AMERICA

RESPONDENT

VS.

Criminal No. 4:03-CR-40008

Civil No. 09-CV-4117

LAIF DOUGLAS POULTON

MOVANT

ORDER

Before the Court is the Report and Recommendation filed on November 3, 2009, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. No. 77). On November 9, 2009, Movant Laif Poulton filed objections to the Magistrate Judge's Report. (Doc. No. 80).

On March 12, 2003, Laif Poulton was indicted for wire fraud. He entered a plea of guilty to the charges on June 27, 2003. The Court sentenced Poulton to a term of twenty-four (24) months imprisonment to be followed by three (3) years supervised release. One of the conditions of Poulton's supervised release was that he not commit any federal, state or local crime. On September 8, 2005, Poulton was released from federal custody and began serving his supervised release.

On April 1, 2008, Poulton was convicted of Theft of Property and two counts of Forgery in the Circuit Court of Washington County, Arkansas. On April 4, 2008, as a result of his criminal conviction, the Court issued a warrant for Poulton's arrest for violation of his supervised release. A Revocation Hearing was set for April 10, 2008. Counsel was appointed to represent Poulton at this hearing. At the hearing, Poulton admitted that he had been convicted of a felony

offense in state court. As a result of this conviction, the Court revoked Poulton's supervised release and sentenced him to a term of imprisonment of twenty-one (21) months to be served consecutively to the sentence imposed in state court.

On September 19, 2008, Poulton filed a Motion to Vacate or Correct Sentence pursuant to 28 U.S.C. section 2255.¹ (Doc. No. 31). This motion was denied by the Court on March 9, 2009. (Doc. No. 55). On March 16, 2009, Poulton filed a Notice of Appeal to the United States Court of Appeals for the Eighth Circuit.² (Doc. No. 57). Now before the Court is Poulton's second Motion to Vacate pursuant to 28 U.S.C. section 2255. In this motion, Poulton asks the Court to correct his sentence because the Federal Sentencing Guidelines were not properly applied by the Court. Even if this was true, the Court can not consider Poulton's motion.

Before a court may consider a second or successive section 2255 motion, a movant must first obtain authorization from the appropriate court of appeals. 28 U.S.C. § 2255. Poulton has not sought nor has he received the required authorization from the Eighth Circuit Court of Appeals in order to file a second or successive section 2255 motion in this matter. This Court lacks jurisdiction to consider the pending motion. Therefore, it must be dismissed. *See United States v. Avila-Avila*, 132 F.2d 1347, 1348-49 (10th Cir. 1997).

For the reasons set forth above, the Court adopts the Magistrate Judge's Report and Recommendation and finds that the Court lacks jurisdiction to consider Movant Laif Poulton's

¹ In addition to this Motion to Vacate under section 2255, Poulton has filed a Motion for Credit for Time Served, Case No. 03-CR-40008; Petition for Habeas Corpus Relief pursuant to 28 U.S.C. § 2241, Case No. 09-CV-4030; and Motion for Credit for Time Spent in Custody, Case No. 09-CV-4069.

² On October 13, 2009, the Eighth Circuit denied Poulton's application for a certificate of appealability and his appeal was dismissed.

pending Motion to Vacate pursuant to 28 U.S.C. section 2255. Accordingly, the motion should be and hereby is **dismissed**.

Further, Movant Laif Poulton is barred from filing in this Court any successive Motions to Vacate or Correct Sentence under 28 U.S.C. section 2255 without first obtaining the required authorization from the Court of Appeals. Any pleading submitted to the Court without the appropriate authorization will be returned by the Clerk of the Court.

IT IS SO ORDERED, this 18th day of December, 2009.

/s/Harry F. Barnes
Hon. Harry F. Barnes
United States District Judge